

**CALENDAR ITEM
C63**

A 25

02/20/15
PRC 9131.1
SLL 85
J. Sampson
J. Rader

S 10

TERMINATION OF A GENERAL LEASE – RIGHT-OF-WAY USE

LESSEE:

OMP/I&G Creekside Investors, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Scott Creek, being a portion of Assessor's Parcel Number 519-0820-002-13, city of Fremont, Alameda County.

AUTHORIZED USE:

Installation, use, operation, and maintenance of new utility conduit pipelines totaling 90 diameter-inches within a bridge.

LEASE TERM:

25 years, beginning June 19, 2014.

CONSIDERATION:

\$3,649 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

OTHER PERTINENT INFORMATION:

1. The State, acting through the State Lands Commission (Commission), received a grant deed from a private property owner for "Parcel 3," which consists of approximately 4.26 acres of sovereign land located in Scott Creek in the city of Fremont. The grant deed for Parcel 3 was a component of a compromise title settlement and exchange agreement (Agreement, SLL 85) authorized by the Commission in April 1982 that involved 828 acres. The purpose of the Agreement was to clear title so that the private property owner could develop 563 acres.
2. Pursuant to the Agreement, the private property owner granted all right, title, and interest in Parcel 3 to the State but reserved to the private property owner a perpetual easement for the construction, use, and

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maintenance of up to four separate bridges. Because of the reservation, the private party currently has the right to construct, use and maintain the four bridges and does not need a lease from the Commission for these actions.

3. In December 2013, OMP/I&G Investors, LLC, the successor in interest to the original private property owner, approached Commission staff about what approvals, if any, were needed prior to the construction of the bridge and associated utility conduit pipelines that it planned to construct over Parcel 3. As a preliminary interpretation, Commission staff took the position that a lease would be required for the utility conduit pipelines running across the bridge.
4. On June 19, 2014, the Commission authorized Lease No. PRC 9131.1, a General Lease – Right-of-Way Use, to OMP/I&G Investors, LLC, for a 25-year term beginning June 19, 2014, for the installation, use, operation, and maintenance of new utility conduit pipelines totaling 90 diameter-inches within the bridge over Parcel 3. The pipelines and conduits are an integral part of the bridge.
5. Over the past six months, Commission staff has further reviewed the file to ascertain whether the intent of the parties to the 1982 Agreement was to include utility conduit pipelines integral to the bridge in the reserved easement. Based on the review, Commission legal staff is of the opinion that it was the intent of the parties and therefore no lease was or is required for the utility conduit pipelines that are an integral part of the bridge.
6. OMP/I&G Investors, LLC, has completed construction of the bridge, the conduits and utilities.
7. As no lease is necessary, Commission staff recommends that the Commission terminate Lease No. PRC 9131.1.
8. The staff recommends that the Commission find that the subject lease termination does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

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EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

Authorize termination of Lease No. PRC 9131.1, a General Lease – Right-of-Way Use, effective February 20, 2015, issued to OMP/I&G Creekside Investors, LLC for the installation, use, operation, and maintenance of new utility conduit pipelines totaling 90 diameter-inches within a bridge over Scott Creek in the city of Fremont, Alameda County.

EXHIBIT A

PRC 9131.1

LAND DESCRIPTION

Two parcels of submerged land, lying in the bed of Scott Creek, situated in the City of Fremont, County of Alameda, State of California, more particularly described as follows:

PARCEL 1

COMMENCING at the intersection of Lakeview Boulevard and Fremont Boulevard as said intersection is shown on the Map of Tract 5187, recorded June 7, 1984 in Book 145 of Maps at Page 6, Official Records of Alameda County, California, said point being marked by a Standard City of Fremont Well Monument and Brass Disk stamped LS 3936, as shown on the Map of said Tract 5187, said point being the beginning of a curve to the right having a radius of 800.00 feet and to which point a radial line bears North 42° 24' 08" East;

Thence along said curve, through a central angle of 23° 54' 56", a distance of 333.92 feet thereon;

Thence South 23° 40' 58" East, 240.48 feet to the beginning of a curve to the left having a radius of 1000.00 feet;

Thence along said curve, through a central angle of 8° 37' 54", a distance 150.65 feet;

Thence South 32° 18' 50" East, 512.10 feet to the point on the northerly line of Scott Creek, described in Parcel 3 in the Grant Deed to the State of California recorded December 1, 1983 as Series No. 83-225688, Official Records of Alameda County, said point hereinafter referred to as Point "A";

Thence along said northerly line North 44° 39' 43" East, 25.66 feet to the POINT OF BEGINNING;

Thence continuing along said northerly line North 44° 39' 43" East, 31.83 feet; thence leaving said line South 32° 18' 50" East, 94.54 feet to the southerly line of Scott Creek described in said Grant Deed; thence along said southerly line South 65° 25' 11" West, 31.29 feet; thence leaving said line North 32° 18' 50" West, 83.16 feet to the POINT OF BEGINNING.

PARCEL 2

COMMENCING at a Point "A", as described in PARCEL 1 of this description, thence along the northerly line of Scott Creek described in said Grant Deed South 44° 39' 43" West, 30.79 feet to the POINT OF BEGINNING;

Thence leaving said northerly line South 32° 18' 50" East, 62.96 feet to the southerly line of Scott Creek; thence along said southerly line South 65° 25' 11" West, 30.78 feet; thence leaving said line North 32° 18' 50" West, 51.77 feet to the northerly line of Scott Creek; thence along said northerly line South 44° 39' 43" West, 31.30 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

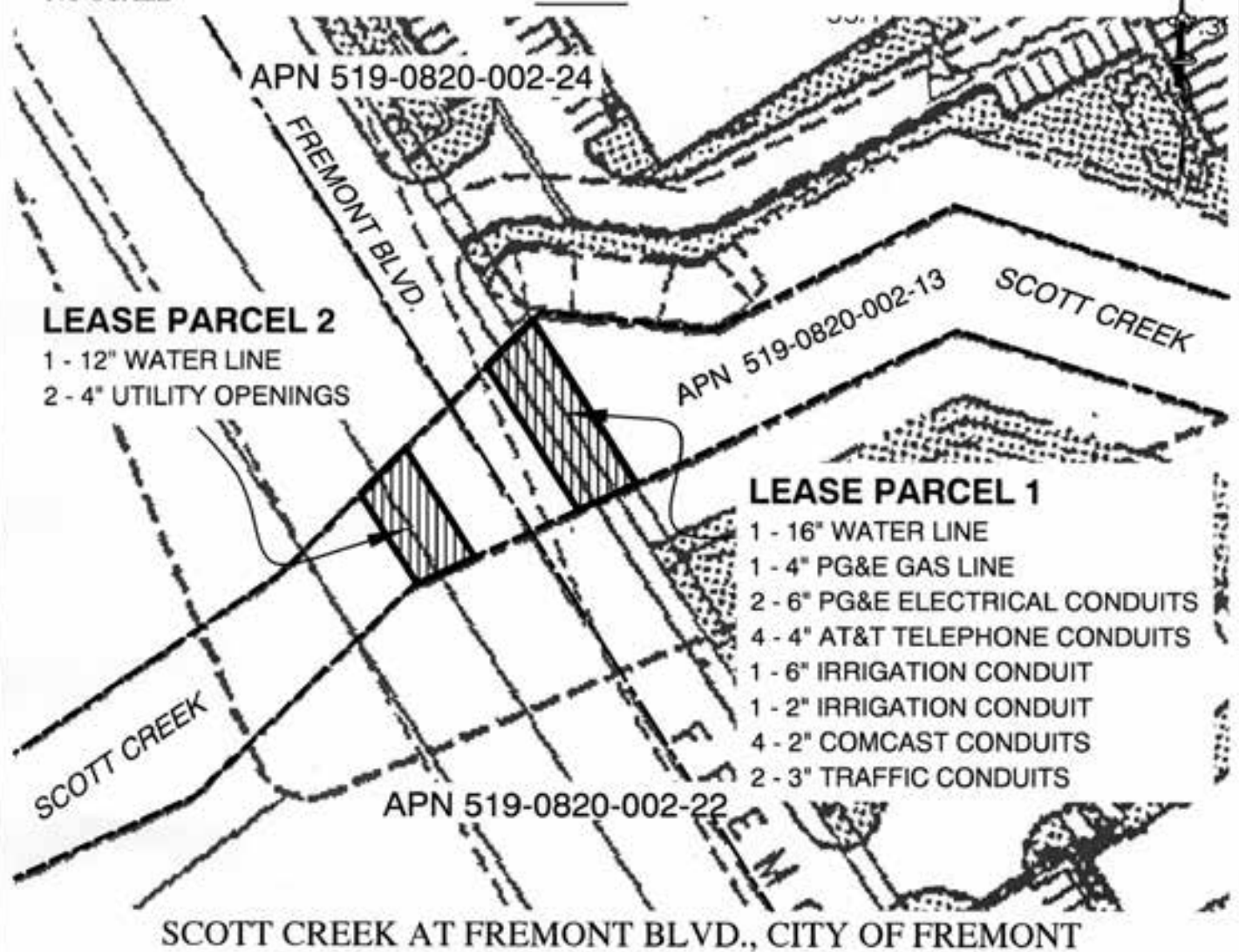
The above description is for Lease of State Lands for a proposed crossing, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 02/09/2015 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9131.1
OMP/I & G CREEKSIDE
INVESTORS, LLC
APN 519-0820-002-13
GENERAL LEASE -
RIGHT-OF-WAY USE
ALAMEDA COUNTY



TS 02/09/15

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.